

No. 11860

United States
Circuit Court of Appeals
For the Ninth Circuit.

LEE FONG FOOK,

Appellant,

vs.

I. F. WIXON, District Director, Immigration
and Naturalization Service, Port of San
Francisco,

Appellee.

Transcript of Record

Upon Appeals from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

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PAUL P. O'BRIEN,

CLERK

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	PAGE
Appeal:	
Certificate of Clerk to Transcript of Record on	40
Designation of Record on.....	38
Notices of	37, 38
Statement of Points on Which Appellant Intends to Rely on	46
Certificate of Clerk to Transcript of Record on Appeal	40
Designation of Record on Appeal.....	38
Exhibit A (Part II):	
Honorable Discharge from the United States Army of Appellant Fook.....	43
Judgment of the Superior Court as to Birth	41
Names and Addresses of Attorneys.....	1
Notice of Appeal	37, 38
Opinion and Order	26
Order Denying Petition for Writ of Habeas Corpus	36
Order to Issue Writ of Habeas Corpus.....	19

Order to Show Cause on Petition for Writ of Habeas Corpus	18
Petition for Writ of Habeas Corpus.....	2
Court's Oral Opinion	11
Letter 11/26/47 to G. C. Ringole /s/ Joseph S. Hertogs	17
Telegram to Gus C. Ringole from Hon. Joseph S. Sanoretti	16
Telegram to Hon. Joseph Savoretti from G. C. Ringole	15
Return to Writ of Habeas Corpus.....	21
Statement of Points on Which Appellant Intends to Rely on the Appeal.....	46
Traverse to Return	23
Writ of Habeas Corpus	20

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In the United States District Court, in and for
the Northern District of California, Southern
Division

No. 27790-G

In the Matter of
LEE FONG FOOK,
On Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS

To the Honorable, the United States District Judge
of the United States District Court, in and for
the Northern District of California:

It is respectfully shown by the petition of the undersigned that the above named, Lee Fong Fook, hereinafter in this petition referred to as the "detained," is unlawfully imprisoned, detained, confined and restrained of liberty by I. F. Wixon, District Director, Immigration and Naturalization Service, San Francisco, California, in the said Northern District of California, Southern Division thereof; that said imprisonment, detention, confinement and restraint are illegal and that the illegality thereof consists in this, to-wit:

This affiant is informed and believes and therefore alleges that said Lee Fong Fook is a citizen of the United States of America, having been born April 6, 1901, in San Francisco, [1*] California;

*Page numbering appearing at foot of page of original certified Transcript of Record.

that on August 14, 1944, such proceedings were taken and had by him, pursuant to the provisions of the applicable statutes of the State of California, to-wit: Sections 10,600 to 10,615 inclusive of the Health and Safety Code, that on said date the Superior Court of the State of California duly and regularly entered its decree in proceeding No. 331145 of the records of the said Superior Court, decreeing that the said detained was born on said date in the said City and County of San Francisco, State of California; that no appeal has been taken from said decree and said judgment of said Court, and that said decree is final. Section 10607 of said code was duly complied with. That pursuant to Section I, Article IV of the Constitution of the United States, the said detained is a citizen of the United States of America.

That said detained is an honorably discharged veteran of the United States Army, holding an honorable discharge dated February 10, 1943.

That since his birth, as affiant is advised, believes and therefore alleges, the said detained has continuously resided in the United States until on or about January 31, 1947, when he left the United States for a temporary visit to China, and that thereafter and on or about August 25, 1947, he returned to the United States and endeavored to enter the United States through the port of San Francisco, State of California; that thereafter and for a long period of time he was held in confinement and incommunicado and was not permitted to see his friends or his counsel; that he is still in con-

finement and is being held in confinement by the said I. F. Wixon, District Director, Immigration and Naturalization Service, San Francisco, California, who has knowledge of the facts hereinabove stated, or has had sufficient time to ascertain those facts.

That the said decree of the said Superior Court of the [2] State of California, in and for the City and County of San Francisco, is binding upon the said Immigration authorities and is so held to be binding upon them in a decision of the United States District Court for the Western District of Washington, in the matter of Dong Yee Yuen vs. R. P. Bonham, District Director, Immigration and Naturalization Service, Seattle, Washington; that a true and correct copy of the said decision, the oral opinion of the Court, is attached hereto and made a part hereof.

That the said detained is entitled forthwith to be released from the imprisonment, confinement and detention in which the said I. F. Wixon, District Director, Immigration and Naturalization Service, San Francisco, California, now illegally holds him.

For a further and second ground for the release of the said detained from the said imprisonment, confinement and detention in which he is now being held, petitioner avers:

Petitioner incorporates herein all of the allegations hereinabove set forth in this petition.

Petitioner states the fact to be that on several occasions during his confinement the said detained appeared before a Board of Special Inquiry who purported to try the case of the said detained and that the hearings before the said Board of Special Inquiry were ordered closed after purported testimony had been taken and had by said Board and that he will be further detained for a period of time unknown to him or to this petitioner, and will be detained for the term and the length of time to be determined by the said I. F. Wixon, District Director, Immigration and Naturalization Service, San Francisco, California; that issues of fact have been raised by the said Director and the said Board of Special Inquiry, and that the said detained was required to produce witnesses to meet said issues of fact while in confinement; that said detained found it a practical impossibility to do so; that while the said hearings were ordered closed under the practice of the said Immigration Service, the said detained is still entitled to produce witnesses upon his behalf, but cannot do so because he is kept in confinement.

That petitioner has been advised informally that the said Board of Special Inquiry will hold that said detained is not entitled to land in this country and is not a citizen of this country, but this petitioner has received no official information or official or other copies of any decision of the said Board. That the petitioner has just been advised and upon such advice and belief alleges, that a Mr. Chin, who was working with this petitioner assisting him in

the said case, was debarred from seeing the said detained and was advised that no person can see said detained.

That this affiant sent a telegram to the Honorable Joseph Savoretti, Assistant Commissioner, Immigration and Naturalization Service, at the main office of said Service in Philadelphia, Pennsylvania; that a copy of the said telegram is attached hereto and that a copy of the reply to said telegram is attached hereto and both made a part of this petition. That the fact, as stated in the reply indicated by said telegram, that it is impracticable to release any person in like position as detained, is not sufficient to impinge or trespass upon or destroy the Constitutional rights and privileges of the said detained, and that the rule set forth in the decision by the United States Circuit Court of Appeals, Ninth Circuit, in the case of *Yuen Boo Ming vs. United States*, 103 Federal Second 355, contains no such exception. That pursuant to Article V of the Amendments to the Constitution of the United States, this detained is entitled forthwith to be released upon bail and now asks this Honorable Court to fix bail in a reasonable amount and order the release of this detained forthwith to the end that this detained will not be deprived of his Constitutional rights to due process. In the event of further trial, [4] said detained being held in said imprisonment, his trial has been and would be unfair, arbitrary, destructive of the Constitutional rights of the said detained and therefore illegal and void, and it is to the best interest of both the said detained

and the said Immigration and Naturalization Service that said detained be forthwith released upon bond in the event that he is to be not forthwith released upon the first ground stated in this petition.

That heretofore and on or about November 19, 1947, in the matter of You Yut Gee, on Habeas Corpus, filed in the above Court, No. 27749R, the Honorable Michael T. Roche presiding, Judge, on application for a writ of Habeas Corpus, the detained in said action, being in the identical position as the detained herein, was duly released upon said petition upon bail in the sum of \$1000.00.

That after the release of the said You Yut Gee, he being of the identical position as the detained in this case, petitioner requested the release of the detained from the local officials of the Immigration and Naturalization Service. They advised that they had no authority in the matter and would communicate with the Central office at Philadelphia, Pennsylvania. That attached hereto is a true and correct copy of a letter received by this petitioner on December 1, 1947, which said copy of letter is made a part of this petition.

For a further ground for the release of the said detained from the said imprisonment, confinement and detention in which he is now being held, petitioner avers:

Petitioner incorporates herein all of the allegations set forth in the First and Second grounds of this petition.

Petitioner states the fact to be that the hearing of the petitioner before the Board of Special Inquiry thus far held is absolutely void, contrary to law, and of no force or effect, and [5] any order predicated thereon is void, contrary to law and of no force or effect, pursuant to the provision of Article V of the Constitution of the United States. That in the decision of the United States Circuit Court of Appeals, Ninth Circuit, in the case of Yuen Boo Ming vs. United States, 103 Federal Second 355, the following rule was firmly established: "The compulsion of the preparation of his or affirmative proof while in confinement is an affront to the ordinary citizen's concept of due process."

This petitioner avers that during the hearings before the Board of Special Inquiry he represented said detained, and because of the detention the detained could not prepare for his defense nor obtain any witnesses to important and material facts with reference to the issues of fact raised by the said Board of Special Inquiry, that he could have otherwise obtained had he been released upon bond; that his hearing was therefore arbitrary, unfair, violative of his Constitutional rights and void, and any action predicated upon said hearings before said Board is likewise void.

This petitioner further states the fact to be that petitioner was deprived by said Board of his rights, under Article V of the Amendments to the Constitution of the United States, in this, that he was deliberately deprived of the right by said Board to cross-examine witnesses.

That the records of the hearings of the said detained by the said Board shows that pending the hearings before said Board, a member of said Board went to the City Hall, San Francisco, California, interviewed witnesses, the names of which this petitioner does not know, and looked at maps, assertedly official, and went around certain parts of Chinatown looking for witnesses for the hearing and took the testimony of one James Lee, whether under oath or otherwise petitioner does not know, and then introduced into evidence the statements of said witness and a statement [6] of what was shown on said assertedly official maps; that thereafter the said member of the said Board again engaged in a search for witnesses and again took the testimony of the witness James Lee and again introduced into evidence the statements of the said James Lee, upon issues of which said evidence thus introduced and placed in the record by the said member of said Board was regarded by the Board and by such member as material to the issue of whether detained is or is not a citizen of the United States. That in thus depriving said detained of his right to cross-examine witnesses and in thus searching out for witnesses against this detained and in thus receiving as evidence the testimony of the said so-called witness and of said maps, this said detained was deprived of his right of cross-examination of all of said witnesses, was given an arbitrary and unfair trial and was completely deprived of his rights to due process, and that the trial was had contrary to the ordinary concepts of fair play and fairness.

That the hearings of said Board of Special Inquiry are void and that any order of deportation that may be predicated upon them is likewise void.

This petitioner hereby refers to and incorporates herein all of the records of files and proceedings in the matter of Lee Fong Fook before the Board of Special Inquiry and alleges his willingness to incorporate and have considered as a part and parcel of this petition when the same shall be presented to this Court.

That while the detained is entitled to appeal from the said order of the said Board of Special Inquiry to the Director of Immigration and Naturalization Service at Philadelphia, that such appeal would be an idle act since the matters hereinabove alleged appear upon the face of the record of the hearings of the said detained before said Board of Special Inquiry, all of which make the said record of the said hearing void upon its face and [7] of no force or effect.

Wherefore petitioner prays that a writ of Habeas Corpus issue herein as prayed for, directed to said I. F. Wixon, District Director, Immigration and Naturalization Service, San Francisco, California, commanding and directing him to bring the body of said detained before this Court at a time and place to be specified by this Court, together with the cause of his detention, so that the same may be inquired into, to the end that said detained may be restored to his liberty and go hence without delay, and that upon the issuance of an order to show cause herein,

the Court fix bail in a reasonable amount so that his detention may immediately cease.

Dated, San Francisco, California, December 8, 1947.

/s/ G. C. RINGOLE,

Attorney for Lee Fong Fook,
Detained.

State of California,

City and County of San Francisco—ss.

The undersigned being first duly sworn, deposes and says:

That he is the petitioner named in the foregoing petition; that he knows the contents thereof; that the same is true of his own knowledge except as to those matters which are therein stated on his information and belief, and as to those matters, he believes it to be true.

/s/ G. C. RINGOLE.

In the United States District Court for the Western
District of Washington, Northern Division

No. 1732

DONG YEE YUEN,

Petitioner,

vs.

R. P. BONHAM, District Director, Immigration
and Naturalization Service, Seattle, Wash-
ington,

Respondent

COURT'S ORAL OPINION

February 20, 1947

The Court: There are a number of other grounds here, but this, to the Court, is the major considera-

tion in this case, and unless there is some proof that this whole proceeding is a fraud—and of course you cannot contend that the Superior Court records of the State of California are a fraud, but that there was a fraud practiced upon that Court——

Mr. Belcher: No such contention here, your Honor.

The Court: Well, if you admit that I don't think that it is necessary for the Court to go into this whole record.

Mr. Belcher: It does seem to me, and it seemed to me at the time the matter was first taken up by the Immigration officials with me, that that was the hurdle that they had to overcome. I couldn't for the life of me see why the Immigration officials could not and are not bound.

The Court: Have you read this Finding 7. I guess they label it, on page 4, Nunc Pro Tunc Birth Certificate, order—— [9]

Mr. Belcher: Finding No. 4?

The Court: No. 7 on page 4. I shall read it and then get it in the record in this manner:

“In 1930 the applicant filed a petition in the Superior Court at San Francisco for adjudication of birth in San Francisco. Exhibit 1.” That evidently is this record here. “The applicant testified during his original examination that testimony was taken from himself and mother and ‘I don't remember anyone else.’ On examination about four months later he says

that his two brothers also testified at the hearing; that the trial lasted about one hour and was completed during the forenoon. The birth certificate shows that the applicant was born on Commercial Street, San Francisco. He was given the opportunity to explain why his birth certificate shows birth on Commercial Street instead of Grant Avenue, but declined to answer. He again said that his mother told him that he was born on Grant Avenue.

“It is apparent that the proceedings in the Superior Court were entirely *ex parte* and not contested. The Order merely says that on December 5, 1900, a male child named Dong Yee Yuen was born to Dong Hung and Leon Shee in San Francisco. Photograph of the applicant and his alleged mother are attached to the Order, but no reference is made in the Order or Petition to the photographs. Considering the court record on its face value the Court did not hold that this particular applicant was born in San Francisco, but merely held that a person named Dong Yee Yuen was born in San Francisco.

“Notwithstanding any discrepancies appearing in the present proceedings, it is not believed that the Superior Court record is any evidence that the applicant was [10] born in San Francisco. Similar Orders from the same Court and birth certificates were presented by Wong Foon and Wong Quai in their applications for return

citizen's certificates, and it was held on appeal that such Orders and birth certificates did not prove birth in San Francisco. See Central Office——”

Well, with that conclusion, this Court cannot in any way agree. A solemn decree from a state court of general jurisdiction must be accepted for the recitations contained in it, and this being supported by a photograph of the individual, cannot lightly be brushed aside by the administrative branch of the Government, and I feel under this fact alone, Mr. Belcher, that I must sustain the application for a writ and direct that the petitioner be discharged from custody, by reason of the fact that he has established by competent proof that he is an American-born citizen.

The matter of taking an American-born citizen, irrespective of what his nationality or his origin in nationality might have been, was so well pointed out by Judge Denman in a case that is somewhat similar here, and particularly now that the Chinese race are no longer excluded from the rights of aliens that were denied to them by the earlier Chinese exclusion laws—those have all been repealed, and there is certainly no reason at all to approach a problem of this kind in any other manner than we would that of any other nationality, and here, whatever the motives were, this petitioner saw fit, some years during the lifetime of his mother, to, in compliance with the laws of the State of California, file his petition and secure a judicial deter-

mination of the place of birth, and to me it establishes clearly that he has all the rights of a natural-born citizen, being such himself, and so judicially determined to be, unless you could attack this decree on the ground of fraud. [11]

Mr. Belcher: Apparently that is not the theory.

The Court: The finding here, of the Immigration Service, is that it might have been somebody else, but the Court decrees are too important and too serious a matter to be set aside by an assumption they might have been in error, so you may prepare findings, based upon this single ground. I am not going into the others.

Certificate

I, Russell N. Anderson, official court reporter for the above-entitled court, do hereby certify that the foregoing is a true and correct transcript of the matters therein set out.

/s/ RUSSELL N. ANDERSEN. [12]

[Western Union Night Letter]

Honorable Joseph Savoretti
Assistant Commissioner,
Immigration & Naturalization
Franklin Trust Building
Philadelphia, Pennsylvania

This wire sent knowledge San Francisco office. Numerous cases pending veterans holding final decrees Superior Court, California, duly finding each

born San Francisco or elsewhere California, all in confinement. I represent three cases, now trying one before Board. Adequate preparation meet issues of fact raised by Board impossible because applicants in detention. Attention invited following rule in Yuen Boo Ming vs. United States 103 Federal Second 355: "The compulsion of the preparation of his or her affirmative proof while in confinement is an affront to the ordinary citizens concept of due process." Therefore hearings while applicants in confinement invalid since confinement violative Constitutional rights. Respectfully request applicants forthwith be released bond or own recognizance.

GUS C. RINGOLE,

Attorney

709 Central Tower

San Francisco, California

[Western Union Night Letter.]

1947 Nov 14 PM 6 11

PA575

P.LR619 47 DL Collect.

Philadelphia Penn 14 701 P

Gus C Ringole, Esquire

709 Central Tower Bldg. SFran.

Reference is made to your telegram November 6 regarding the detention of applicants for admission at San Francisco pending determination of citizenship status. After careful consideration of matter it is deemed impracticable to grant your request for

release of these persons from custody pending disposition their cases.

JOSEPH SAVORETTI,
Assistant Commissioner,
Immigration and Natz Svc.

U. S. Department of Justice
Immigration and Naturalization Service
San Francisco 11, California

November 26, 1947

1300-63804, 63805, 63806, 60052, 60053, 58482, 58483

Mr. Gus C. Ringole

Attorney at Law

Central Tower

San Francisco, California

Dear Sir:

Re: Wong Fon, Wong Yock and alleged wife Chin
Pui Ching, Fong Fook Lee and alleged wife
Ng May Sang, Mar Foo Ling alias Frank Mar
and alleged wife Ong Gew Fung

Reference is made to your letter of November 19, 1947, wherein you request that the above-named individuals be released from detention under the same conditions as the order entered in the case of You Yut Gee by the United States District Court at San Francisco, California.

You were advised informally at that time that this office could not under any outstanding law or regulation grant your request, but that in view of the circumstances your letter had been transmitted,

by air mail, to the Central Office of this Service, Philadelphia, Pennsylvania, for further consideration.

We have now been advised by our Central Office, in a telegram dated November 26, that your application for release of all these aliens has been denied.

Very truly yours,
For the District Director
San Francisco District

/s/ JOSEPH S. HERTOGS,
Assistant Chief,
Entry and Departure Section.

[Endorsed]: Filed Dec. 8, 1947. [15]

In the United States District Court in and for
the Northern District of California, Southern
Division

No. 27790G

In the Matter of
LEE FONG FOOK,
On Habeas Corpus.

ORDER TO SHOW CAUSE ON PETITION
FOR WRIT OF HABEAS CORPUS

Upon reading and filing the verified petition herein of G. C. Ringole, petitioner herein, praying

for the issuance of a writ of habeas corpus, good cause appearing therefor,

It Is Hereby Ordered that I. F. Wixson, District Director, Immigration and Naturalization Service, San Francisco, California, be and appear before this Court on the 15th day of December, 1947, at the hour of 10 a.m. of said day, to show cause, if any he has, why a writ of habeas corpus should not issue in this matter as herein prayed.

It Is Hereby Further Ordered that a copy of this order be served upon said I. F. Wixson, District Director, Immigration and Naturalization Service, San Francisco, California, or such other person having said detained in custody as an officer or subordinate to said I. F. Wixson, District Director, Immigration and Naturalization Service, San Francisco, California.

Dated: San Francisco, California, December 8, 1947.

LOUIS E. GOODMAN,
Judge.

[Endorsed]: Filed December 8, 1947. [17]

[Title of District Court and Cause.]

ORDER TO ISSUE WRIT OF HABEAS
CORPUS

Good cause appearing therefor,

It Is Hereby Ordered that a writ of habeas corpus issue herein to I. F. Wixson, District Director,

Immigration and Naturalization Service, San Francisco, California, commanding him to produce before the above Court the body of said Lee Fong Fook on to wit: the 15th day of December, 1947, at the hour of 10 a.m. of said day, and to make due return to said writ at any time upon the morning of said day.

Done in Open Court this 8th day of December, 1947.

LOUIS E. GOODMAN,
District Judge.

[Endorsed]: Filed December 9, 1947. [18]

[Title of District Court and Cause.]

WRIT OF HABEAS CORPUS

The President of the United States of America to
I. F. Wixson, District Director, Immigration
and Naturalization Service, San Francisco, Cali-
fornia, Greeting:

You are hereby commanded that the body of Lee Fong Fook by you restrained of his liberty as it is said, detained by whatsoever names the said Lee Fong Fook may be detained, together with the date and cause of his being taken and detained, you have before the Honorable Louis E. Goodman, Judge of the United States District Court in and for the Northern District of California, Southern Division, at the courtroom of said Court in the Post Office Building, Seventh and Mission Streets in the

City and County of San Francisco, State of California, at 10 o'clock a.m. on the 15th day of December, 1947, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable Louis E. Goodman, Judge of the United States District Court, at San Francisco, California, this 9th day of December, 1947.

[Seal]

C. W. CALBREATH,

Clerk of the Above Court,

By L. C. JACOBSEN,

Deputy Clerk.

[Endorsed]: Filed December 9, 1947. [19]

[Title of District Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

Now comes I. F. Wixson, as District Director, Immigration and Naturalization Service, Port of San Francisco, and, making a return on the Writ of Habeas Corpus heretofore issued by this Court on December 4, 1947, produces the body of the petitioner, Lee Fong Fook, before this Court and states:

I.

The petitioner is detained in custody by respondent as an applicant for admission to the United States at the Port of San Francisco who did not

appear to the Examining Immigrant Inspector at the Port of San Francisco to be clearly and beyond a doubt entitled to enter, and in whose case an Order of Exclusion was made by a Board of Special Inquiry, regularly sworn and convened, pursuant to the [20] provisions of 8 U.S.C. 153, the said Order being dated November 28, 1947.

II.

The petitioner has indicated his intention of applying for a review of the finding of the Board of Special Inquiry ordering his exclusion to the Commissioner of Immigration and Naturalization, as is provided by 8 U.S.C. 153.

III.

There is attached hereto and marked "Exhibit A" a certified copy of the record of the Board of Special Inquiry hearing in the case of the petitioner and of his wife, Ng May Sang.

Respondent prays that the Writ of Habeas Corpus heretofore issued be discharged and the petitioner remanded to his custody.

I. F. WIXSON,

District Director, Immigration and Naturalization
Service, Port of San Francisco, California.

[Endorsed]: Filed December 12, 1947. [21]

[Title of District Court and Cause.]

TRAVERSE TO RETURN

Comes now petitioner and files this as traverse to the return to writ of habeas corpus in the above cause, filed by I. F. Wixson, District Director, Immigration and Naturalization Service, Port of San Francisco:

I.

The examining Immigration Inspector at the Port of San Francisco who examined said Lee Fong Fook, did so contrary to and in violation of the Administrative Procedure Act, Section VI, reading in part as follows:

“Except as otherwise provided in this Act—

(A) Appearance: Any person compelled to appear in person before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel * * * Every party shall be accorded the right to appear in person or by or with counsel * * *

(B) Investigations: No process, requirement of a report, inspection, or other investigative act or demand shall be issued, made, or enforced in any manner or for any purpose except as authorized by law.”

That the said Lee Fong Fook was during the entire examination [22] by said Immigration Inspec-

tor denied the right to counsel and to be accompanied, represented or advised by counsel; that said inspection and said examination was wholly void and thus the Board of Special Inquiry was not regularly, or at all, sworn and/or convened.

II.

Petitioner has indicated his intention of applying for a review of the findings of the Board of Special Inquiry ordering his exclusion by the Commissioner of Immigration and Naturalization, but at the same time demanded the admission to bail of said Lee Fong Fook so that pending said appeal the said Lee Fong Fook would be given the opportunity to find witnesses for his defense and to obtain a re-hearing and re-opening of the case, all as authorized by applicable regulations and the practice of the Immigration and Naturalization Service.

That petitioner files this traverse, not only as such, but as an amendment to his petition for writ of habeas corpus herein.

III.

Petitioner places of record his objection to all of the testimony set forth in Respondent's Exhibit A, except proof of his marriage to his wife, and except the certified copy of the Decree of the Superior Court of the State of California, in and for the City and County of San Francisco, the final decree adjudicating his birth in San Francisco, and his honorable discharge and proof of his identity as being the holder of said honorable discharge and the

person mentioned in said decree on the ground that the testimony is incompetent and immaterial, and on the further ground that all the proceedings of the said Board are void because predicated upon the investigation and inspection of the Immigration Inspector at the Port of San Francisco, done and made in violation of the Administrative Procedure Act as hereinabove quoted. [23]

Petitioner avers that there are no facts to be considered by the Court, but that the following questions of law arise:

1. Is the decree of the Superior Court of the State of California, in and for the City and County of San Francisco, dated August 14, 1944, in Proceeding No. 331145, decreeing that said detained was born in San Francisco, binding upon the Immigration and Naturalization Service (*Dong Yee Yuen vs. Bonham*, Oral Opinion attached to petition)?
2. Is the hearing before the Board of Special Inquiry of the detained invalid by virtue of the above quoted provision of the Administrative Procedure Act?
3. Is the hearing before the Board of Special Inquiry, if otherwise valid, void and of no force and effect because said detained was kept in confinement throughout said hearing and thus denied due process of law (*Yuen Boo Ming vs. United States*, 103 Federal Second 355)?
4. Are the proceedings of the Board unfair and arbitrary, not only for the above reasons but

because testimony of witnesses was inserted in the record taken by the Board itself outside of the hearing and presence of the detained, and without permitting him the right to cross-examine the said witnesses?

5. Is detained presentlyailable?

Respectfully submitted,

/s/ G. C. RINGOLE, Petitioner,
Attorney for Lee Fong Fook.

[Endorsed]: Filed December 15, 1947. [24]

In the United States District Court, for the Northern
District of California, Southern Division

No. 27790-G

In the Matter of

LEE FONG FOOK,

On Habeas Corpus.

R. C. Ringole, 709 Central Tower, San Francisco,
Calif., Attorney for Lee Fong Fook.

Frank J. Hennessy, United States Attorney; Edgar B. Bonsall, Assistant United States Attorney, attorneys for Respondent.

OPINION AND ORDER

Goodman, District Judge.

On August 5, 1947, petitioner arrived at the Port of San Francisco aboard the steamship "General

Meigs'' on a return trip from China. He was refused entry to the United States by Immigration officials, and ever since arrival has been and still is detained in their custody. While he was in such detention, an Immigration Board of Special Inquiry [25] (8 USC 153) conducted hearings on a number of different days in October and November of 1947, at all of which petitioner was represented by counsel of his choosing. On December 1, 1947, the Board of Special Inquiry denied petitioner admission into the United States on the ground that he was an alien not eligible for admission. (Immigration Act of 1924, Sec. 13.) Thereupon petitioner entered an appeal to the Commissioner of Immigration and Naturalization. Pending the appeal and on December 8, 1947, petitioner filed a petition for writ of habeas corpus in this court. Therein petitioner alleged that he was an American citizen by birth and that the respondent was unlawfully restraining him of his liberty. For the purpose of inquiring into the cause of the alleged restraint of liberty (28 USC 452), the Court issued a writ of habeas corpus and directed respondent to produce the body of the petitioner at a date fixed in the writ. Respondent complied with the writ and also filed a return in which the proceedings of the Board of Special Inquiry and the evidence there considered were set out. No evidence was presented to the Court upon the hearing, except the affidavit of petitioner's counsel in support of his application for release pending the administrative proceedings before the Immigration authorities, and the cause was

submitted upon the petition, the return, the traverse thereto, and upon briefs to be filed, all of which are now before the Court.

There is no dispute about the following facts:

At least from early childhood, petitioner was continuously a resident of the United States. On September 23, 1942 he was inducted into the United States Army. On February 10, 1943, he was honorably discharged from the Armed Forces. His certificate of discharge recites that he was born in San Francisco, State of California, and was 41½ years of age at time of enlistment. His army service was entirely in the United States. On August 14, 1944, he obtained in the Superior Court of the State of California, in and for the City and County of San Francisco, under the provisions of the Health and Safety Code of the State of California, (Sections 10600 etseq.) an order of said court establishing the fact that he was born on the 6th day of April, 1901, in San Francisco, California. On December 2, 1946, United States Passport No. 159067 was issued to petitioner by the State Department of the United States wherein it was stated that he was an American citizen. Thereupon petitioner left the continental United States for a visit to China. Upon his attempted re-entry on August 25, 1947, the passport as well as certified copies of his Army discharge and the State Court order establishing birth were tendered to the Immigration officials as evidence of his right to re-enter the United States.

At the hearings conducted by the Board of Special Inquiry, the petitioner and his wife, whom he had married on his visit to China, as well as the witness who testified on petitioner's behalf in the State Court proceeding to establish his birth, were questioned. The testimony raised an issue as to whether petitioner had in fact been born in the United States. The Board of Special Inquiry determined this issue adversely to petitioner. This was clearly within the power of the Immigration Authorities. Petitioner was not entitled to a judicial hearing as to his right to admission. (*Wong Wing Sing et ux. v. Nagle*, 299 F. 601; (9th Cir.); *Ex Parte Yoshimasa Nomura*, 297 F. 191 (9th Cir.); *Ex Parte Fong Chow Oi*, 15 F. 2d 209 (D.C. Cal.)

I.

At the hearing in this Court, petitioner contended, as he did through his counsel before the Board of Special Inquiry, that the decree of the Superior Court of the State of California has established petitioner's birth in the United States, and that it was beyond the authority and power of the immigration officials to pursue any inquiry as to the decree's validity. The argument of the petitioner in this regard is that the State Court decree is an adjudication of petitioner's citizenship by which the United States is bound under the Full Faith and Credit provision of the Constitution (Const. Art. IV), as extended by statute to the Federal Courts. (28 USC 687.)

Neither reason nor authority support this contention.

The proceeding authorized by California state law for the establishment of the fact of birth is not an adversary proceeding, save and except that the statute requires that notice of the hearing be given to the District Attorney of the county wherein the hearing is had. The United States not being a party to such proceeding, nor having consented thereto, is not bound by the state court adjudication. Particularly is this so as to the administration of laws of the United States, which it alone enforces. (Const. Art. I, Sec. 9, Clause 1.) If the California Court had granted petitioner a decree of naturalization, pursuant to its authority so to do expressly granted by Congress (54 Stat. 1140; 8 USC 701), then of course such a decree would be fully binding on the United States and could only be attacked in the manner provided by Federal Statute. (8 USC 738). But jurisdiction to adjudicate the citizenship status of a United States resident has never been conferred by Congress on state courts. Consequently, any state court [28] judgment purporting to exercise that jurisdiction cannot, to that extent, claim of the Federal Courts full faith and credit.

The state court decree establishing birth is no more conclusive upon the United States as to citizenship or as to the right of entry into the United States than would be the finding of a state court in a proceeding between private litigants wherein it might be necessary or proper in deciding property or personal rights to find the date or place of birth

of one of the litigants before the court. In my opinion the decree of the state court is evidence of petitioner's birthplace but not conclusive proof of his citizenship. The United States has the full right to inquire into the facts upon which American citizenship is claimed, when entry into the United States is sought; and the burden of proving that citizenship is upon the person seeking entry.¹ If this were not so, the doors would be wide open to fraud upon the part of entrants in the claim of citizenship or fraud in obtaining state decrees as to birth² *Lee Leong v. U. S.* 217 Fed. 48; *Ex Parte Lee*, 49 Fed. 2d 486. 468.

Hence the claim that the petitioner should be unconditionally released from custody, upon the ground of the conclusiveness of the state court decree, is rejected.

II.

In further support of his claimed right to unconditional release from custody, petitioner contends that he was not accorded due process by the Immi-

¹Upon his attempted entry, petitioner was subject to the immigration laws as if he had never resided in the United States. (*U. S. ex rel. Stapf v. Corsi*, 287 U. S. 129.)

²The record here shows that the sole witness for the petitioner in the state court proceedings to establish birth, there testified to having seen petitioner immediately after he was born in San Francisco in 1901. This same witness later testified before the Immigration Authorities that he saw petitioner for the first time in 1911 or 1912 when the latter was about three or four years old.

gration Authorities in that the was not represented by counsel at the preliminary investigation and because of the admission at the hearing before the Board of Special Inquiry of alleged incompetent and improper evidence. These contentions, however, are pre-mature, inasmuch as the administrative proceedings have not yet been completed. The writ will not generally lie as to errors or irregularities in administrative proceedings themselves until petitioner has fully pursued the administrative remedies provided by law. (U. S. Tuck, 194 U. S. 161; U. S. ex rel. Loucas v. Comm. of Im. 49 Fed. 2d 473.) Final determination may be favorable to petitioner or a rehearing may be ordered, thus providing an opportunity for correction of any possible errors theretofore committed. Primarily, however, any such errors or irregularities must be viewed against the background of the entirely completed administrative proceedings before it can be determined judicially whether or not they have in fact impaired the fairness and due process of such proceedings.

III.

In his petition for the writ, petitioner claimed that because of his confinement by the immigration officials, he was unable to obtain witnesses on his behalf and he prayed to be released on bail until the final determination of the administrative and court proceedings. But at the hearings before this Court this plea. However, this contention was re-asserted in petitioner's briefs and the issue thus raised was argued by both sides. Under the special circum-

stances of this case and in furtherance of justice in the conduct of the attacked administrative proceeding, it should be decided.

Petitioner is not an alien seeking entry to the United [30] States for the first time. Indisputably he has lived in the United States continuously from very early youth. He served honorably in the armed forces. He was accepted in the armed forces as an American citizen. He could have resided here, citizen or not, the rest of his life. He is entitled at least to the presumption that he is a citizen of the land in which he resided. *Shelton v. Tiffin*, 47 U. S. 162; *Ex Parte Delaney*, 72 F. Supp. 312. By the happenstance of his visit to China and his attempted re-entry, he may never be permitted to cross the barrier into the land where he has lived so long and which he has honorably served. By this same happenstance, he must prove his American citizenship in order to pass the barrier. He must reach into the remote past. In justice to him, he should have some liberty, if the circumstances warrant it, to obtain witnesses to prove the fact, if it be such, of his birth.³

These and similar considerations have prompted courts, to recognize power in themselves, independent of statute, to grant in habeas corpus proceedings, temporary release to persons detained by

³Although the proceedings before the Board of Special Inquiry have been concluded, the case may be reopened for the taking of additional evidence. (Immigration and Nationality Laws and Regulations, Sec. 136.5, 136.6.)

government authorities for deportation. In *re Lum Poy*, 128 Fed. 974; *Principe v. Ault*, 62 F. Supp. 279; *Wright v. Henkel*, 190 U. S. 40. Such courts have spoken of this type of liberty as "release on bail." This, in my opinion, is not wholly accurate. Nor to release on bail is to unnecessarily usurp and invade the reach of the writ of habeas corpus. Nor need the power of the court to grant such form of release be sought in the law of recognizance. For the habeas corpus statute itself empowers a Federal Judge to make such order as justice and law requires. (28 USC 461.) Therefore, wherever circumstances impel the conclusion that due process in any particular administrative immigration proceeding cannot be achieved without allowing the detained person some liberty of action wherewith to fully prepare his case, temporary release for that particular purpose has statutory sanction. Release from restraint under writ of habeas corpus need not be full or unconditional. The type and character of such release may in itself be less or different than complete release.⁴

It is my opinion that the court, under 28 USC 461, has power to grant conditional or partial release from restraint, wherever required by the cir-

⁴E. G., the writ of habeas corpus *ad prosequendum* and the writ of habeas corpus *ad testificandum* each contemplate a release for a limited purpose, without full discharge from custody. Likewise, in habeas corpus proceedings, prisoners serving under defective sentences have been ordered returned to the district where convicted for correction of sentence. See *Bledsoe v. Johnston*, 58 Fed. Supp. 129.

cumstances of the case in order to cure a mischief not otherwise reachable, which would to any extent taint the detention with unfairness. And if detention during the course of the administrative proceedings is of the essence of such unfairness, it would be unjust to await termination of the proceedings in reliance upon the concept that the petitioner might finally prevail.

For the reasons heretofore stated, the unconditional release of petitioner from the custody of the Immigration Officials is refused without prejudice.

The respondent is ordered to produce the petitioner in Court on Monday, February 2, 1948 at 2 o'clock p. m. for a hearing to determine whether petitioner should be released upon such conditions and for such a period of time as may be proper and in furtherance of justice.

Dated: January 23, 1948.

LOUIS E. GOODMAN,
United States District Judge.

(Entered in Civil Docket Jan. 27, 1948.)

[Endorsed]: Filed Jan. 26, 1948. [32]

[Title of District Court and Cause.]

ORDER DENYING PETITION FOR WRIT
OF HABEAS CORPUS

In the above cause, a petition having been filed on behalf of the above named Lee Fong Fook, for a Writ of Habeas Corpus, and thereafter the Court having issued a Writ of Habeas Corpus to which a return was duly made by I. F. Wixson, District Director Immigration and Naturalization Service, San Francisco, California, and a traverse thereafter having been duly filed on behalf of the said detained, Lee Fong Fook, and the matter having been heard and submitted to the Court, and the Court having filed its opinion herein on January 26, 1948,

Now, Therefore, upon the grounds stated in said opinion, It Is Hereby Ordered and Adjudged, and this Court does Hereby Order and Adjudge that the said petition be and the same is Hereby Denied, and said Lee Fong Fook be and he is hereby remanded to the custody of the said I. F. Wixson District Director Immigration and Naturalization Service, San Francisco, California, except that he may be conditionally and temporarily released only, upon posting bond in the sum of One thousand (\$1,000) Dollars.

Done in open Court this 6th day of February, 1948.

LOUIS E. GOODMAN,
District Judge.

(Entered in Civil Docket Feb. 7, 1948.)

[Endorsed]: Filed Feb. 6, 1948. [33]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above named Lee Fong Fook does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the order made and entered herein, February 6, 1948, denying the petition herein for a writ of habeas corpus upon his behalf and from the whole thereof.

Dated: February 9, 1948.

/s/ G. C. RINGOLE,
Attorney for Lee Fong Fook.

Receipt of a copy of the foregoing notice of appeal is hereby acknowledged this 9th day of February, 1948.

FRANK J. HENNESSY,
United States Attorney.

By DANIEL O. DEASY,
Assistant United States
Attorney.

Attorneys for Respondent.

[Endorsed]: Feb. 9, 1948.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that the above named Lee Fong Fook does hereby appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the opinion and order made and entered into herein January 26, 1948, and from the whole thereof.

Dated: February 10, 1948.

/s/ G. . RINGOLE,

Attorney for Lee Fong Fook.

Receipt of a copy of the foregoing notice of appeal is hereby acknowledged this 10th day of February, 1948.

FRANK J. HENNESSY,
United States Attorney.

[Endorsed]: Filed Feb. 10, 1948.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

To the Clerk of the United States District Court
for the Northern District of California, Southern
Division:

It is respectfully requested that the following be submitted to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit:

1. Petition for Writ of Habeas Corpus on behalf of the above named Lee Fong Fook filed.

2. Order to Show Cause Why Writ of Habeas Corpus Should not issue.
3. Writ of Habeas Corpus.
4. Return of Respondent, I. F. Wixson, District Director, Immigration and Naturalization Service, San Francisco, California.
5. Traverse of Lee Fong Fook.
6. Opinion of Court filed January 26, 1948.
7. Order denying petition for Writ of Habeas Corpus.
8. Memorandum of points and authorities on behalf of both parties herein.
9. Exhibits including, but not limited to, honorable discharge, U. S. Army, of Lee Fong Fook, Order establishing birth of Lee Fong Fook by Superior Court, San Francisco.
10. Notices of Appeal.

Dated: February 10, 1948.

/s/ G. C. RINGOLE, per A.H.G.J.,
Attorney for Lee Fong Fook.

Receipt of a copy of the foregoing designation of record on appeal is hereby acknowledged this 10th day of February, 1948.

/s/ FRANK J. HENNESSY,
United States Attorney.

[Endorsed]: Filed Feb. 10, 1948.

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 38 pages, numbered from 1 to 38, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of Lee Fong Fook on Habeas Corpus No. 27790 G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$4.40 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 12th day of February A. D. 1948.

[Seal]

C. W. CALBREATH,
Clerk.

/s/ E. H. NORMAN,
Deputy Clerk.

Lee F. Fook

Yut Ying

1. FULL NAME OF CHILD _____ MAIDEN SURNAME OF MOTHER _____

2. PLACE OF BIRTH: San Francisco

(B) CITY OR TOWN _____

3. DATE OF BIRTH: April 6 1901 YEAR

4. SEX Male

5. COLOR OR RACE Chinese

FATHER OF CHILD

MOTHER OF CHILD

6. FULL NAME Lee Sung Kay

8. FULL MAIDEN NAME Yut Ying

7. BIRTHPLACE China

9. BIRTHPLACE China

STATE OR COUNTRY

STATE OR COUNTRY

Lee F. Fook

10. SIGNATURE OF REGISTRANT _____

11. ABSTRACT OR SUPPORTING EVIDENCE _____

NAME AND KIND OF DOCUMENT (INCLUDING BY WHOM ISSUED, AND SIGNED AND DATE OF ISSUE) _____

DATE ORIGINAL DOCUMENT WAS MADE _____

A. Oral testimony of friend who knows the facts concerning the birth of applicant in San Francisco

B. _____

C. _____

D. _____

12. INFORMATION CONCERNING REGISTRANT AS STATED IN DOCUMENT

BIRTHDATE OR AGE

BIRTHPLACE

NAME OF FATHER

FULL NAME OF MOTHER

A. _____

B. _____

C. _____

D. _____

13. DATE OF FILING _____

14. REGISTRAR _____

Offered for filing pursuant to order of the Superior Court of San Francisco County

made the 14th day of August

A.D. 19 44, establishing of record the fact of birth in the

State of California

Exhibit 1300/00045-2

In the Superior Court of the County of San Francisco
State of California

IN THE MATTER OF THE PETITION OF

Lee F. Fook

To ESTABLISH THE BIRTH OF

Lee F. Fook

331145

Dept. 3

ORDER ESTABLISHING
FACT OF BIRTH

The verified petition of Lee F. Fook

to establish the birth of Lee F. Fook

having been filed herein on the 8th day of August A. D. 1944 and such petition

having by an order of court been duly set for hearing on the 14th day of August A. D. 1944

at the hour of 10 o'clock A. M. of said day; and now on said day said matter coming on regularly for hearing

and it appearing to the satisfaction of this court from the evidence introduced that the said

Lee F. Fook petitioner herein is beneficially interested in establishing of record
the fact of the birth of said Lee F. Fook

in that Petitioner and Lee F. Fook are the same person

that a copy of the said petition was upon the 8th day of August A. D. 1944

served upon Edmund G. Brown the district attorney of the

county of San Francisco

day of April A. D. 1901, a male child was born

to Lee Sung Kay father

and Yut Ying mother

that the name of said child is Lee F. Fook

that said birth has not been registered in conformity with the provisions of law in effect at the time of said
birth; and no one appearing at said hearing to oppose the making of this order:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, that on the 6th day of April

A. D. 1901, a male child of the name of Lee F. Fook

was born to Lee Sung Kay father

and Yut Ying mother

at the City and county of San Francisco State of California

Done in court this 14th day of August A. D. 1944

THOS. M. FOLEY

Judge of the Superior Court

ENDORSED
FILED

AUG 14 1944

NOTE.—Before filing CERTIFIED insert in the certificate form below, as of the DATE OF THE BIRTH, the personal and statistics
particulars required for the records of the State Registrar of Vital Statistics. Certified copies of the above order must
be delivered to the Local Registrar of Vital Statistics and to the State Registrar of Vital Statistics.

AUG 14 1944

H. A. van der Zee, Clerk
H. Brunner
Deputy Clerk

H. A. VAN DER ZEE, COUNTY CLERK OF SAN
FRANCISCO, AND EX-OFFICIO CLERK OF
THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE CITY AND
COUNTY OF SAN FRANCISCO.

DEPUTY



MARGIN RESERVED FOR BINDING
WRITE PLAINLY WITH UNFADING INK—THIS IS A PERMANENT RECORD

FORM 30 BIRTH
STATE OF CALIFORNIA

Honorable Discharge
from
The Army of the United States



TO ALL WHOM IT MAY CONCERN:

This is to Certify, That* _____ **Lee F. Fook** _____

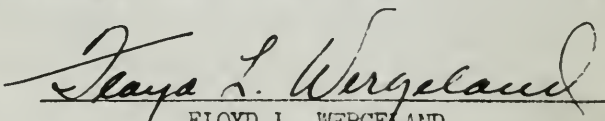
† 39397855, Private, Co B, 65th Med Tng Bn, 15th Med Tng Regt, MRTC _____

THE ARMY OF THE UNITED STATES, as a TESTIMONIAL OF HONEST
AND FAITHFUL SERVICE, is hereby HONORABLY DISCHARGED from the
military service of the UNITED STATES by reason of ‡ Section VIII, AR 615-360.

Said _____ **Lee F. Fook** _____ was born
in _____ San Francisco _____, in the State of _____ California _____

When enlisted he was 41 6/12 years of age and by occupation a _____ Farm Laborer _____
He had _____ brown _____ eyes, _____ black _____ hair, _____ dark _____ complexion, and
was _____ 5 _____ feet _____ 5½ _____ inches in height.

Given under my hand at _____ Camp Barkeley, Texas _____ this
10th day of February _____, one thousand nine hundred and _____ Forty-three _____


FLOYD L. WERGELAND
Lieutenant Colonel, Medical Corps

Commanding

EXHIBIT 6 - SF 1300-60052-3

See AR 345-470.
*Insert name; as, "John J. Doe."
† Insert Army serial number, grade, company, regiment, or arm or service; as "1620302"; "Corporal, Company A, 1st Infantry"; "Sergeant, Quartermaster Corps."
‡ If discharged prior to expiration of service, give number, date, and source of order or full description of authority therefor.
18-10608
W. D., A. G. O. Form No. 55
April 30, 1941

ENLISTED RECORD

OF

Fook Lee F. 39397855 Private
(Last name) (First name) (Middle Initial) (Army Serial No.) (Grade)
Enlistment inducted,¹ September 23, 1942, at Sacramento, California
Completed 0 years, 4 months, 19 days service for longevity pay
Prior service:² None

Office of the Finance Officer
Camp _____ as

Paid in Full \$ 98.62

On FEB 10 1943

By: M. L. Murphy, Major, F.D.

Noncommissioned officer: Never

Qualification in arms:³ Not armed

Horsemanship: Not mounted Army specialty: None

Attendance at: None

(Name of noncommissioned officers' or special service school)

Battles, engagements, skirmishes, expeditions: None

Decorations, service medals citations: None

Wounds received in service: None

Date and result of smallpox vaccination:⁴ October 8, 1942. Immune.

Date of completion of all typhoid-paratyphoid vaccinations:⁴ November 18, 1942.

Date and result of diphtheria immunity test (Schick):⁴ None

Date of other vaccinations (specify vaccine used):⁴ Tetanus Toxoid completed January 14, 1943.

Physical condition when discharged: Good Married or single: Single

Character: Excellent

Remarks:⁵ No time lost under AW 107. Soldier entitled to travel pay.

Not recommended for reenlistment or reinduction

FOR HON. DISCH. MIL. PERSONNEL ISSUED THIS THE 4 DAY OF May 1944

S. B. RUSSELL, 1st Lt., A.U.
ADJUTANT

Print of Right Thumb

Signature of soldier: Lee F. Fook

J. M. McClelland, WOJG, AUS
Asst Chief, Enl Pers Sec

Endorsing

¹ Enter date of induction only in case of trainee inducted under Selective Training and Service Act, 1940 (Bull. No. 25, W. D., 1940); in all other cases enter date of enlistment.

² For each enlistment give company, regiment, or arm or service, with inclusive dates of service, grade, cause of discharge, number of days lost under AW 107 (none, so state), and number of days retained and cause of retention in service for convenience of the Government, if any.

³ Give date of qualification, and number, date, and source of order announcing same.

⁴ See paragraph 6, AR 40-215.

⁵ Enter periods of active duty of enlisted men of the Regular Army Reserve and the Enlisted Reserve Corps and dates of induction into Federal Service in the case of members of the National Guard.

[Endorsed]: No. 11860. United States Circuit Court of Appeals for the Ninth Circuit. Lee Fong Fook, Appellant. vs. I. F. Wixon, District Director, Immigration and Naturalization Service, Port of San Francisco, Appellee. Transcript of Record. Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

Filed February 17, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11860

In the Matter of
LEE FONG FOOK,

On Habeas Corpus.

STATEMENT OF POINTS ON WHICH AP-
PELLANT INTENDS TO RELY ON THE
APPEAL

Comes now Lee Fong Fook, appellant in the above entitled matter, through his attorney, G. C. Ringole, and states as his points on which he intends to rely on the appeal the following:

1. That the petition for writ of habeas corpus on behalf of appellant should have been granted and appellant, Lee Fong Fook, absolutely discharged from the custody of Respondent I. F. Wixson, District Director, Immigration and Naturalization Service, San Francisco, California, without day.

2. That the final judgment of the Superior Court of the State of California in and for the City and County of San Francisco in favor of appellant finding, and decreeing that he was born in San Francisco, California, on April 6, 1901, was and is absolutely binding and conclusive upon the Immigration and Naturalization Service, and upon said Respondent and was and is binding and conclusive upon the District Court of the United States in and

for the Northern District of California, Southern Division.

3. That Respondent, I. F. Wixson, District Director, Immigration and Naturalization Service, San Francisco, California, was and is absolutely bound and concluded by said judgment of the Superior Court of the State of California in and for the City and County of San Francisco, finding and decreeing that appellant herein, Lee Fong Fook, was born in San Francisco, California, on April 6, 1901, and that the said judgment is not only evidence of the time and place of birth of the said appellant, Lee Fong Fook, but is conclusive evidence of the time and place of birth of said appellant.

4. That the full faith and credit clause of the Constitution extended to the Federal courts by 28 U.S.C.A. Section 687, requires the Federal courts to give full faith and credit to said judgment of the Superior Court of the State of California in and for the City and County of San Francisco finding and decreeing that said Lee Fong Fook was born in San Francisco, California, on April 6, 1901.

5. That said judgment of the Superior Court of the State of California in and for the City and County of San Francisco finding and decreeing that said appellant was born in San Francisco, California, on April 6, 1901, removes appellant, Lee Fong Fook from the jurisdiction of said Respondent I. F. Wixson, District Director, Immigration and Naturalization Service, San Francisco, California, and that said Respondent, I. F. Wixson, District Direc-

tor, Immigration and Naturalization Service, San Francisco, California, was and is without jurisdiction over said appellant and was and is without right or authority to detain him.

6. That the Honorable District Court erred in not granting the petition of said appellant absolutely, and releasing him from the custody of said Respondent without day, and erred in holding that the judgment of the Superior Court of the State of California in and for the City and County of San Francisco finding and decreeing the place and date of birth of said appellant was not absolutely binding and conclusive on the said Immigration and Naturalization Service and said Respondent and said Honorable Court, and in holding that Section 687, 28 U.S.C.A. does not compel said Court to give full faith and credit to said judgment.

/s/ G. C. RINGOLE,

Attorney for Appellant.

Receipt of a copy of the foregoing Statement of Points on Which Appellant Intends to Rely on the Appeal is hereby acknowledged this 17th day of February, 1948.

FRANK J. HENNESSY,

U. S. Attorney.

By /s/ T. SOLOMON.

[Endorsed]: Filed Feb. 17, 1948.

